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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Components

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to allegations of circumvention from the American HFC Coalition (the petitioners), the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether imports of hydrofluorocarbon (HFC) components R-32, R-125, and R-143a from the People's Republic of China (China) that are further processed into HFC blends in the United States are circumventing the antidumping duty (AD) order on HFC blends from China.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Manuel Rey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4987 and (202) 482-5518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2019, the petitioners filed a request that, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), Commerce initiate an anti-circumvention inquiry regarding imports of HFC components R-32, R-125, and R-143a from China that are further processed into HFC blends in the United States, which the petitioners allege are circumventing the *Order*.¹ On April 26, 2019, National Refrigerants, Inc. (National Refrigerants) filed comments objecting to the petitioners' request to initiate an anti-circumvention inquiry regarding HFC components imported from China.² On May 13, 2019, the petitioners filed a response to National Refrigerants' comments.³ On May 14, 2018, Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. (Lianzhou) also filed comments objecting to the petitioners' request to initiate an anti-circumvention inquiry regarding HFC components imported from China.⁴

Scope of the Order

The products subject to the *Order* are HFC blends. HFC blends covered by the scope are R-404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R-407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R-407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R-410A, a zeotropic mixture of 50

¹ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Request to Initiate Anti-Circumvention Inquiry Pursuant to Section 781(a) of the Act," dated April 4, 2019 (Initiation Request); *see also Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

² See National Refrigerants' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Objection to Petitioners' Request for a §781(a) Anti-Circumvention Inquiry and Request for a Meeting," dated April 26, 2019.

³ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China; Request for Section 781(a) Investigation Regarding Certain Imported HFC Components: Response to National Refrigerants, Inc.," dated May 13, 2019.

⁴ See Lianzhou's Letter, "Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd.'s Response to American HFC Coalition's Request for a §781(a) Anti-Circumvention Inquiry and Request for Meeting, Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated May 14, 2019.

percent Difluoromethane and 50 percent Pentafluoroethane; and R-507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R-507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.⁵

Any blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of the *Order*.

Excluded from the *Order* are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from the *Order* are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-422D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B.

HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050.

⁵ R-404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R-407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R-407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R-410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ-20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R-507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ-50, and Suva®507. R-32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R-125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R-143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.⁶

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of the HFC components R-32, R-125, and R-143a from China that are further processed in the United States to create an HFC blend that would be subject to the *Order*.

Initiation of Anti-Circumvention Proceeding

Section 781(a) of the Act and 19 CFR 351.225(g) provide that Commerce may find circumvention of an AD order when merchandise of the same class or kind as merchandise that is subject to the order is completed or assembled in the United States. In conducting anti-circumvention inquiries under section 781(a)(1) of the Act, Commerce relies upon the following criteria: (A) merchandise sold in the United States is of the same class or kind as other merchandise that is subject to an AD order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the AD order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components is a significant portion of the total value of the merchandise.

A. Merchandise of the Same Class or Kind

The petitioners provide evidence to demonstrate that various companies subject to the *Order* are importing R-32, R-125, or R-143a components from China to be blended into HFC blends covered by the *Order*, and, therefore, the requirements of section 781(a)(1)(A)(i) of the

⁶ See *Order*.

Act are satisfied.⁷ Specifically, the petitioners provide evidence showing that since the establishment of the *Order*, Chinese companies have begun selling Chinese components to U.S. companies, which are blended in the United States to make the same merchandise covered by the scope of the *Order*.⁸

B. Completion of Merchandise in the United States

The petitioners provide evidence to demonstrate that certain U.S. companies are importing Chinese-made HFC components to be further blended into HFC blends covered by the *Order*, and, therefore, the requirements of section 781(a)(1)(B) of the Act are satisfied.⁹ The petitioners point to evidence to demonstrate that patterns of trade have shifted from the investigation and show that Chinese companies are now exporting components, instead of in-scope HFC blends, and U.S. companies which previously had imported blends are now importing these components for the purpose of blending them in the United States into covered HFC blends.¹⁰

C. Minor or Insignificant Process

Under sections 781(a)(1)(C) and 781(a)(2) of the Act, Commerce will take into account five factors to determine whether the process of assembly or completion of merchandise in the United States is minor or insignificant. Specifically, Commerce will consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production

⁷ See Initiation Request at 6-9, Exhibit 1 (iGas products website), Exhibit 2 (proprietary information), Exhibit 3 (iGas and BMP website), Exhibit 4 (proprietary information), Exhibit 5 (Florida Division of Corporations – Xianbin Meng Results), Exhibit 6 (proprietary information), and Exhibit 7 (Memorandum, “Respondent Selection for the Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People’s Republic of China,” dated August 17, 2015 (Respondent Selection Memo)).

⁸ *Id.*

⁹ *Id.* at 9-12, Exhibit 2 (proprietary information), Exhibit 7 (Respondent Selection Memo), Exhibit 8 (Census Data), Exhibit 9 (proprietary information),

¹⁰ *Id.*

facilities in the United States; and (E) whether the value of processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

1) Level of investment in the United States

The petitioners provide evidence, including information presented to the International Trade Commission (ITC) during its investigation, to demonstrate that blending is a simple and straightforward process that requires relatively small investment (less than one million dollars), as compared to an order of magnitude of 25 to one, or even 50 to one, larger investment for the manufacture of HFC components.¹¹

2) Level of research and development in the United States

The petitioners provide evidence to demonstrate that blending operations do not require significant research and development.¹²

3) Nature of the production process in the United States

The petitioners provide evidence to demonstrate that the blending production process in the United States is a relatively simple process which only requires a holding tank for the finished HFC blend, some pipes, and a valve.¹³ Further, the petitioners contend that there is no chemical reaction and no temperature change involved in blending HFC components, and simply involves combining the components in accordance with the blending recipe, then packaging the blend into various containers.¹⁴

4) Extent of production facilities in the United States

¹¹ *Id.* at 13-14, Exhibit 10 (ITC Staff Conference transcript), and Exhibit 11 (ITC Hearing transcript).

¹² *Id.*

¹³ *Id.* at 14-15, Exhibit 11 (ITC Hearing transcript), Exhibit 12 (TTI Response to Section D QR), and Exhibit 13 (BMP Parking Lot Picture).

¹⁴ *Id.*

The petitioners provide record evidence to demonstrate that blending is a simple operation that requires minimal personnel and very basic production facilities.¹⁵ The petitioners assert that the blending process simply combines the components together according to the recipe, and then packages the finished blend into containers.¹⁶

5) Value of processing performed in the United States

The petitioners provide an analysis based on proprietary information to demonstrate that the blending process represents a very small percent of the total value of the imported components from China.¹⁷ Thus, the petitioners contend that such a small percentage of value-added represents a very small proportion of the value of the merchandise sold in the United States.

D. Value of Merchandise Produced in the Foreign Country Is a Significant Portion of the Value of the Merchandise

The petitioners provide record evidence to demonstrate that the components sourced from China are the primary inputs in the finished HFC blends and account for a significant portion of the total value of the merchandise, in accordance with section 781(a)(1)(D) of the Act.¹⁸ For example, the petitioners point to evidence that the average unit value of R-32, R-125, and R-143a was \$4.90 per-kilogram (kg) in 2018, while the average unit value of the in-scope HFC blends was \$6.71 per-kg.¹⁹

E. Factors to Consider in Determining Whether Action Is Necessary

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 15, Exhibit 8 (Census Data), Exhibit 14 (proprietary declaration), Exhibit 15 (proprietary information), and Exhibit 16 (proprietary information).

¹⁸ *Id.* at 15-16 and Exhibit 8 (Census Data).

¹⁹ *Id.*

Section 781(a)(3) of the Act identifies additional factors that Commerce shall consider in determining whether to include parts or components in an AD order as part of an anti-circumvention inquiry, such as patterns of trade, including sourcing patterns, and affiliations. The petitioners contend that based on the proprietary information and other evidence on the record, certain imports of components used to produce blends subject to the *Order* represent a change in the pattern of trade.²⁰ In particular, the petitioners contend that there has been a surge of Chinese HFC components from various companies since the issuance of the *Order*, and this surge occurred at the same time HFC blends imported from China dramatically decreased from these same companies.²¹ Further, given the large disparity between the production facilities, investment, and amount of production-related workers needed to produce HFC components as compared to blending such components, there is a significant incentive for companies to evade application of AD duties upon importation by shifting their blending operations to the United States.²² The petitioners contend that this evidence points to a pattern of trade intended to be addressed by section 781(a) of the Act, which, if allowed to continue, will negate the effectiveness of the *Order*.

Conclusion

Based on the information provided by the petitioners, we determine that there is sufficient information to warrant an initiation of an anti-circumvention inquiry, pursuant to section 781(a) of the Act and 19 CFR 351.225(g). Commerce will determine whether the merchandise subject to the inquiry (as described in the “Merchandise Subject to the Anti-Circumvention Inquiry”

²⁰ *Id.* at 16-19, Exhibit 2 (proprietary information), Exhibit 8 (Census Data), Exhibit 13 (BMP Parking Lot Picture), and Exhibit 17 (BMP Employees).

²¹ *Id.*

²² *Id.*

section above) is circumventing the *Order* such that it should be included within the scope of the *Order*.

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

Following consultation with interested parties, Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. Before issuance of any affirmative determination, Commerce intends to notify the ITC of any proposed inclusion of the inquiry merchandise under the *Order* in accordance with section 781(e)(1)(A) of the Act. Pursuant to section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

Notification to Interested Parties

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

Dated: June 12, 2019.

Jeffrey I. Kessler,

Assistant Secretary

for Enforcement and Compliance.

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